

**II. Rejections Under 35 U.S.C. §103(a)**

The Office Action rejects claims 1-5, 8-11, 14 and 15 under 35 U.S.C. §103(a) over U.S. Patent Application Publication No. 2002/0116156 to Remboski et al. (hereinafter "Remboski") in view of U.S. Patent Application Publication No. 2005/0159851 to Engstrom et al. (hereinafter "Engstrom"); claim 12 under 35 U.S.C. §103(a) over Remboski and Engstrom in view of U.S. Patent No. 6,134,541 to Castelli et al. (hereinafter "Castelli"); claim 13 under 35 U.S.C. §103(a) over Remboski and Engstrom in view of U.S. Patent No. 6,137,909 to Greineder et al. (hereinafter "Greineder"); and claims 16-25 under 35 U.S.C. §103(a) over Remboski in view of Engstrom and U.S. Patent No. 6,795,799 to Deb et al. (hereinafter "Deb"). These rejections are respectfully traversed.

Applicant notes that all of the rejections in the Office Action rely on the combination of Remboski and Engstrom. Applicant will discuss below the non-obviousness of combining Engstrom with Remboski.

Engstrom teaches systems and methods that collect vehicle related data and driver related data on a substantially real time basis, evaluate this data and recognize or predict a current driving environment, such as city driving, highway driving and/or suburban driving. At least one characteristic of the vehicle may then be adapted to the current or predicted driving environment to optimize both driver and vehicle performance. See, for example, paragraph [0049] (engine and chassis parameters), paragraph [0050] (ride and/or handling characteristics) and paragraph [0059] (safety features).

Engstrom, therefore, appears to be directed to recognizing or predicting a current driving environment and adapting the vehicle accordingly. Engstrom does measure vehicle parameters such as acceleration, pedal position, gear selection, vehicle speed as well as driver related data, such as eye and/or head movements. However, these measured parameters are

not used for the purpose of monitoring how well the operator is operating the vehicle or how efficiently the driver is driving the vehicle.

The Office Action asserts that Engstrom teaches a method of monitoring the operation of a machine that uses a performance indicator distribution comprising a range of values to calculate overall performance. With reference to paragraphs [0018], [0025] and Fig. 5, Engstrom appears to disclose a "range of values." However, the "range of values" disclosed in Engstrom is not a distribution of performance indicators for the operator. Rather, it relates the machine itself. In other words, Engstrom teaches or suggests use of a performance indicator distribution to calculate overall performance which is then used to predict or recognize a current driving environment. The performance indicator distribution of Engstrom is used, for example, for calculating the probability of a certain category of environment (paragraph [0013]), the conditions under which the driver is performing (paragraph [0055]) and detecting the driving environment (paragraph [0056]).

Engstrom, therefore, does not teach the use of at least one performance indicator distribution comprising a range of values for a performance indicator derived from said at least one machine parameter to calculate at least one performance indicator for the at least one machine operator.

In contrast to Engstrom, the claimed invention is not directed to a system and/or method for monitoring the performance of a machine vehicle, but is directed for monitoring the performance of a machine operator and to calculate at least one performance indicator for the machine operator. The last three lines of independent claims 1 and 16 make it clear that the performance indicator is for the operator and not for the machine.

Applicant, therefore, respectfully submits that a person skilled in the art trying to solve the problem of attempting to monitor the performance or efficiency of a machine operator would not consult Engstrom at all since Engstrom teaches a solution to monitoring

the performance of a machine vehicle. Applicant further respectfully submits that, in the event that Engstrom was consulted at all, the failure of Engstrom to teach any subject matter related to monitoring the performance of a machine operator would have made the combination of Remboski and Engstrom not obvious to a person having ordinary skill in the art at the time of the invention. The combination of Remboski and Engstrom therefore seems to be based on an impermissible use of hindsight knowledge obtained from applicant's disclosure. The combination would not have been obvious at the time the invention was made.

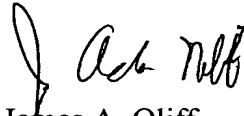
The other applied references fail to overcome the deficiencies of Remboski and Engstrom with respect to the independent claims. Accordingly, all of the rejections are in error and should be withdrawn.

### **III. Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-25 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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